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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF TEXAS

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UNITED STATES OF AMERICA

*versus*

DIETRICK LEWIS JOHNSON

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CRIMINAL ACTION NO. 4:12-CR-80

**MEMORANDUM ADOPTING REPORT AND  
RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE**

Came for consideration the report of the United States Magistrate Judge in this action, this matter having been heretofore referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636. On March 4, 2013, the report of the Magistrate Judge was entered containing proposed findings of fact and recommendation that the Defendant's Motion to Withdraw Plea of Guilty (Dkt. #36) should be granted.

On March 4, 2013, the Magistrate Judge recommended that the motion be granted. The Magistrate Judge indicated that he gave the Assistant District Attorney the opportunity to stipulate that the state would not use Defendant's federal plea as a confession in the parallel state proceeding, but the Assistant District Attorney would not so certify. The Magistrate Judge then found that if the state had certified, the Court would see the failure to advise as harmless. The Magistrate Judge only determined that, since there was no stipulation, the Defendant's plea was not made knowingly or voluntarily to the full consequences of his federal plea of guilty.

On March 18, 2013, the Government filed objections. As part of the objections, the Assistant District Attorney has now certified that the State of Texas will not use the evidence of Defendant's federal plea against him in the state's case in chief, reserving the right to use his federal plea for rebuttal and impeachment. The Court agrees with the Magistrate Judge that once the State of Texas

made the certification that it would not use the federal plea against Defendant in its case in chief, the error was harmless.

The Court, having made a *de novo* review of Government's objections, is of the opinion that the findings and conclusions of the Magistrate Judge are correct, and the objections are without merit. Therefore, the Court hereby adopts the findings and conclusions of the Magistrate Judge, in part, as the findings and conclusions of this Court. It is accordingly

**ORDERED** that the Defendant's Motion to Withdraw Plea of Guilty (Dkt. #36) is **DENIED**.

SIGNED at Beaumont, Texas, this 10th day of April, 2013.

A handwritten signature in black ink, reading "Marcia A. Crone", is positioned above a horizontal line. The signature is written in a cursive, flowing style.

MARCIA A. CRONE  
UNITED STATES DISTRICT JUDGE